

Consolidated appeals from decisions of the Alaska State Office, Bureau of Land Management, summarily dismissing appeals from conveyance of village selection lands in accordance with the Alaska Native Claims Settlement Act, 43 U.S.C. § 1613 (1982).

Affirmed.

1. Appeals -- Rules of Practice: Appeals: Dismissal -- Rules of Practice:
Appeals: Timely Filing

A notice of appeal must be filed within the time limits provided in 43 CFR 4.411(a). Failure to file an appeal within the time allowed requires dismissal of the appeal.

2. Patents of Public Lands: Effect

Applications for lands to which the title has passed by issuance of a legal patent must be rejected.

APPEARANCES: B. L. and Norma Jean Newman, et al., pro sese.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

On December 7, 1977, the Alaska State Office, Bureau of Land Management (BLM), granted patent number 50-78-0016 to Eklutna, Inc., and patent number 50-78-0015 to Cook Inlet Region, Inc., for the surface and subsurface estates, respectively, of lands to which they were entitled in accordance with sections 14(a) and 14(f) of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1613(a) and (f) (1982). Certain lots in these patents lay between the Old Glenn Highway and appellants' properties in sec. 30, T. 15 N., R. 1 W., Seward Meridian. These lots had been approved for conveyance by an October 21, 1977, BLM decision that was published in the Federal Register and the Anchorage Times and provided until late November 1977 for any party claiming a property interest in lands affected by the decision to file an appeal.

On December 10, 1984, appellants filed appeals with BLM stating they should have had the opportunity to purchase these lots or to appeal the conveyance to Eklutna, Inc. By decisions dated January 22, 1985, BLM dismissed the appeals summarily for failure to timely appeal the October 1977 decision.

Appellants have filed timely notices of appeal with the Board from the January 1985 decision, and we have consolidated them sua sponte. 1/

[1] BLM's decisions are affirmed. Compliance with the time limits provided in 43 CFR 4.411(a) is essential to initiating a viable appeal. That regulation provides that if a decision is published in the Federal Register a person not served with the decision must transmit a notice of appeal in time for it to be filed within 30 days after the date of publication. In this case the notices were filed more than 7 years later. Failure to file an appeal within the time allowed requires dismissal of the appeal. Oscar Mineral Group #3, 87 IBLA 48 (1985). 2/

[2] In 1983 and 1984 appellants also applied for the lots between their properties and the highway "in accordance with PLO [Public Land Order] 1613." 3/ Although the BLM decisions of January 22, 1985, do not deal with these applications, they cannot be granted because the lands applied for have been patented. James & Gloria Eldorado, 82 IBLA 9 (1984). 4/

Therefore, in accordance with the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Will A. Irwin

We concur: Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

Franklin D. Arness
Administrative Judge

1/ IBLA 85-342 is the appeal of B. L. and Norma Jean Newman, AA 54200; IBLA 85-343, of Ervin R. Lashbrook, AA 51231; IBLA 85-345, of David H. Raulerson, AA 54756; and IBLA 85-512, of Richard M. Hamilton, AA 54800.

2/ 43 CFR 4.411(c) provides that if "a notice of appeal is filed after the grace period provided in 4.401(a), the notice of appeal will not be considered and the case will be closed by the officer from whose decision the appeal is taken." 43 CFR 4.401(a) provides:

"(a) Grace period for filing. Whenever a document is required under this subpart to be filed within a certain time and it is not received in the proper office during that time, the delay in filing will be waived if the document is filed not later than 10 days after it was required to be filed and it is determined that the document was transmitted or probably transmitted to the office in which the filing is required before the end of the period in which it was required to be filed. Determinations under this paragraph shall be made by the officer before whom is pending the appeal in connection with which the document is required to be filed."

Since appellants' notices of appeal were not filed within 10 days after they were due, BLM apparently overlooked 43 CFR 4.411(c) when it issued decisions and granted them a right of appeal to the Board.

3/ For a discussion of the provisions of PLO 1613, see Robert & Patricia Bailey, 89 IBLA 369, 92 I.D. 606 (1985).

4/ For the same reason the BLM decision of Mar. 8, 1985, rejecting the PLO 1613 application filed Nov. 16, 1984, by Richard M. Hamilton, AA 54800, must be affirmed.

